

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:13-cv-508-FDW**

TELEMANCHUS MONTE BESS,

Plaintiff,

vs.

**NURSING STAFF, Lanesboro Correctional
Institution, N.C. DEPARTMENT OF
PUBLIC SAFETY, LANESBORO
CORRECTIONAL INSTITUTION,
Defendants.**

ORDER

THIS MATTER is before the Court on the pro se Plaintiff's "Motion to Withdraw from Claim." (Doc. No. 9). The Court construes the motion as a motion for voluntary dismissal under Rule 41 of the Federal Rules of Civil Procedure.

Under Rule 41, Plaintiff could have filed a notice of dismissal without a court order. See FED. R. CIV. P. 41(a)(1)(A)(i) (stating that the plaintiff may take a voluntary dismissal without a court order "before the opposing party serves either an answer or a motion for summary judgment"). In any event, the Court will grant Plaintiff's motion to dismiss. The Court notes that Plaintiff indicates that he would like for this Court to withdraw the Order of the Court requiring partial payment from Plaintiff's trust account because he does not want to have to pay the filing fee. The Court will not withdraw the Order, as Plaintiff is still required to pay the full filing fee even though he is taking a voluntary dismissal of this action. See McGore v. Wrigglesworth, 114 F.3d 601, 607 (6th Cir. 1997) ("Even a voluntary dismissal of a complaint or an appeal does not eliminate a prisoner's obligation to pay the required filing fees."); see also 28 U.S.C. § 1915(b)(1) (stating that "if a prisoner brings a civil action or files an appeal in forma

pauperis, the prisoner shall be required to pay the full amount of a filing fee”).

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Motion to Withdraw from Claim, (Doc. No. 9), is **GRANTED**.
2. The Clerk is instructed to terminate this action.

Signed: November 21,

A handwritten signature in cursive script, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

